

# Historic Preservation Easements: Two Case Studies



Richmond Battlefields Association  
Ben Brockenbrough, President

# Historic easements



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two ways:

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You will encounter historic preservation easements in two ways:

1. They are an important tool for preservation, providing tax credit incentives to property owners in exchange for the surrender of their right to develop their property.
2. They are a requirement of many government funding programs, including:
  - American Battlefields Protection Program (US)**
  - Civil War Sites Protection Fund (VA).**

# Historic easements



ABPP and the CWSPF rules specify that the state be the holder of preservation easements.

- VA easements are administered according to the Open-Space Land Act.

# Historic easements



THE GOOD NEWS:

# Historic easements



## THE GOOD NEWS:

- Virginia Department of Historic Resources (DHR) is the designated holder of VA historic preservation easements.

Easements administered by experts in, and advocates for, historic preservation.

# Historic easements



## THE GOOD NEWS:

- VA has one of the most generous tax credit incentives in the US.



# Historic easements



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- VA has one of the most generous tax credit incentives in the US.

Tax credits can be spread out over multiple years.

Tax credits can be sold on the market.

# Historic easements



## THE (not so) GOOD NEWS:

- The process to qualify for tax credits is rigorous.

# Historic easements



## THE (not so) GOOD NEWS:

- The process to qualify for tax credits is rigorous.

Requires a specially qualified real estate appraiser.

Qualified appraisers are few, can cherry pick  
from the most lucrative jobs.

# Historic easements



## THE (not so) GOOD NEWS:

- Tax credits are more valuable at times when the real estate market is high.
- Tax credits are more attractive to landowners who pay high taxes than they are to less-wealthy land holders.

# Historic easements



## THE (not so) GOOD NEWS:

- Oversight of easements is multijurisdictional, from Federal and State agencies down to local Boards of Supervisors.

# Historic easements



## THE (not so) GOOD NEWS:

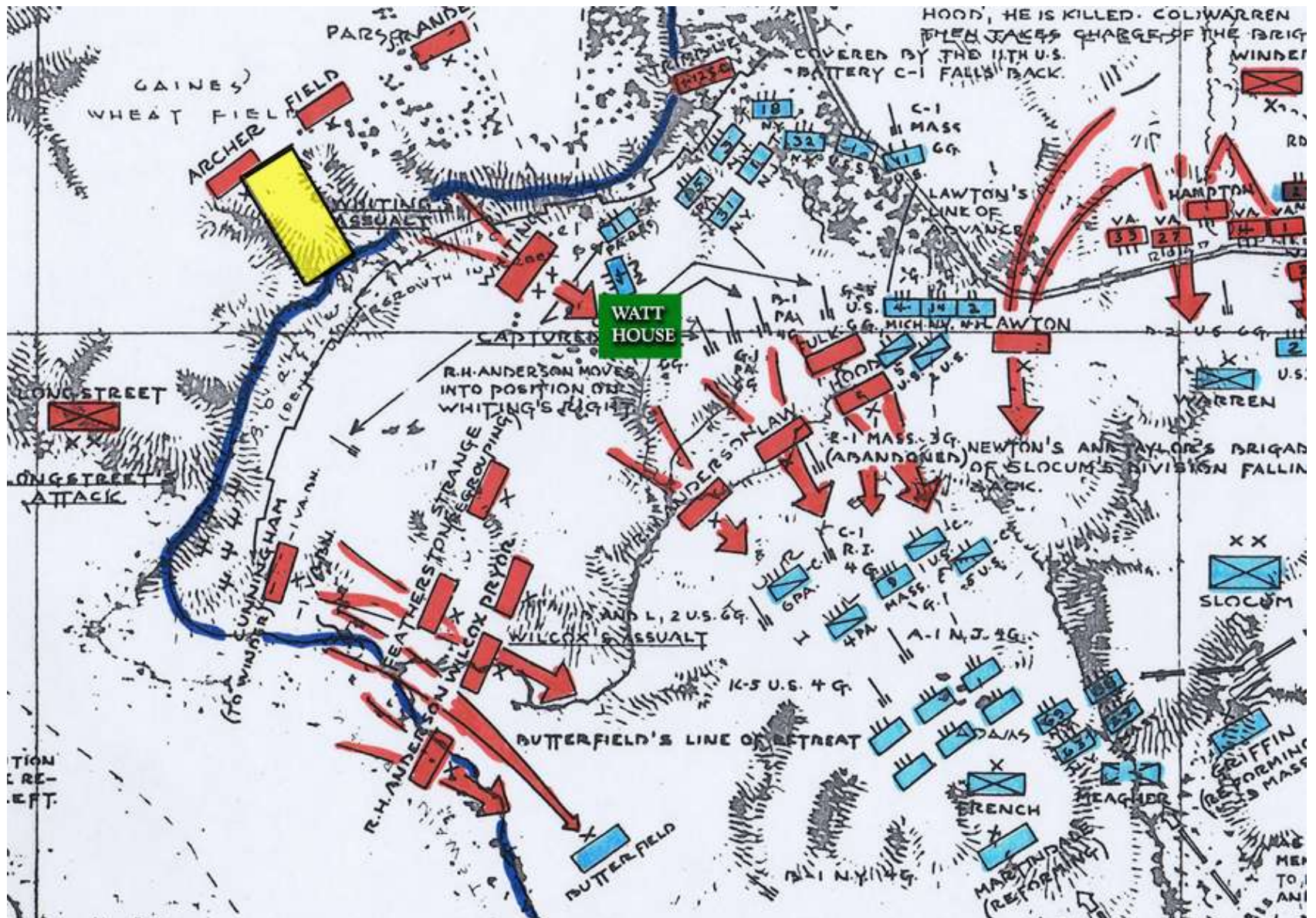
- Oversight of easements is multijurisdictional, from Federal and State agencies down to local Boards of Supervisors.

This creates a confusing and overlapping mash-up of law and public policy.

You are now entering...

# Case Study #1, Gaines' Mill, VA

*Richmond Battlefields*  
ASSOCIATION





## Case Study #1: Gaines' Mill, VA



**2008**

NPS contacts RBA to investigate For Sale sign on battlefield.

RBA negotiates with family and buys 3.2 acres on Boatswain's Creek and park boundary.

RBA has large non-historic house demolished and removed, site remediated.

## Case Study #1: Gaines' Mill, VA



**2009**

RBA applies for and receives CWSPF grant, agrees to historic easement.

Texas Historical Commission erects state monument commemorating attack of Hood's Texas Brigade.

## Case Study #1: Gaines' Mill, VA



**2010**

RBA notifies NPS that property is ready for transfer.

## Case Study #1: Gaines' Mill, VA



**2010**

RBA notifies NPS that property is ready for transfer.

NPS declines – state they want the property but will not accept a preservation easement.

## Case Study #1: Gaines' Mill, VA



**2014**

With support of DHR, RBA requests permission to return CWSPF funds and walk away from easement agreement.

Currently awaiting approval from Office of the Attorney General.

## Case Study #1: Gaines' Mill, VA



Alternative outcomes?

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Alternative outcomes?

**IF** you intend to sell your historic property, and

**IF** your buyer will accept a preservation easement,

## Case Study #1: Gaines' Mill, VA



Alternative outcomes?

**IF** you intend to sell your historic property, and

**IF** your buyer will accept a preservation easement,

The easement can wipe out most of your property's real estate value.



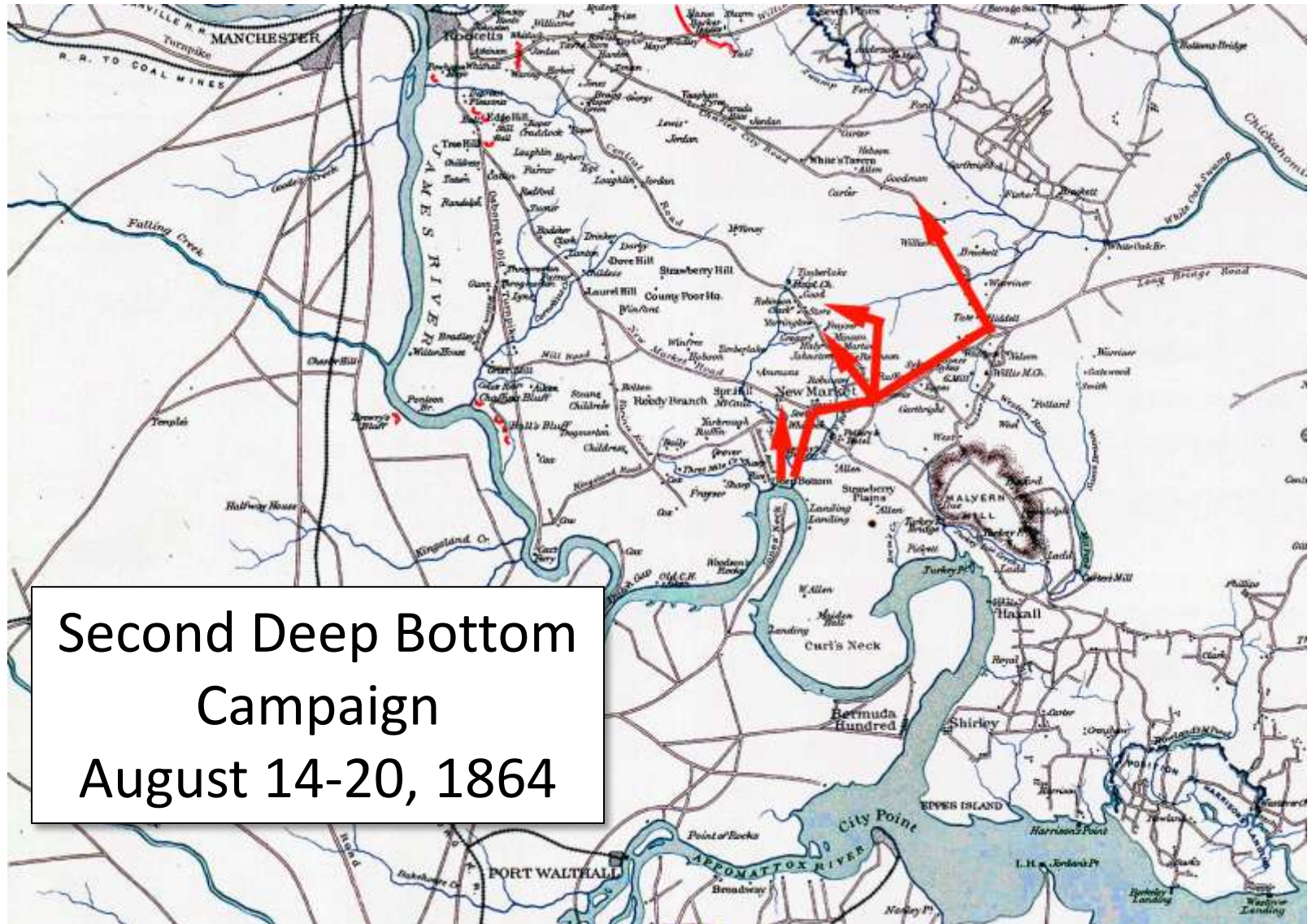
A property easement can  
reduce the value of your  
property by as much as

**76%.**







## Case Study #2: Fussell's Mill, VA

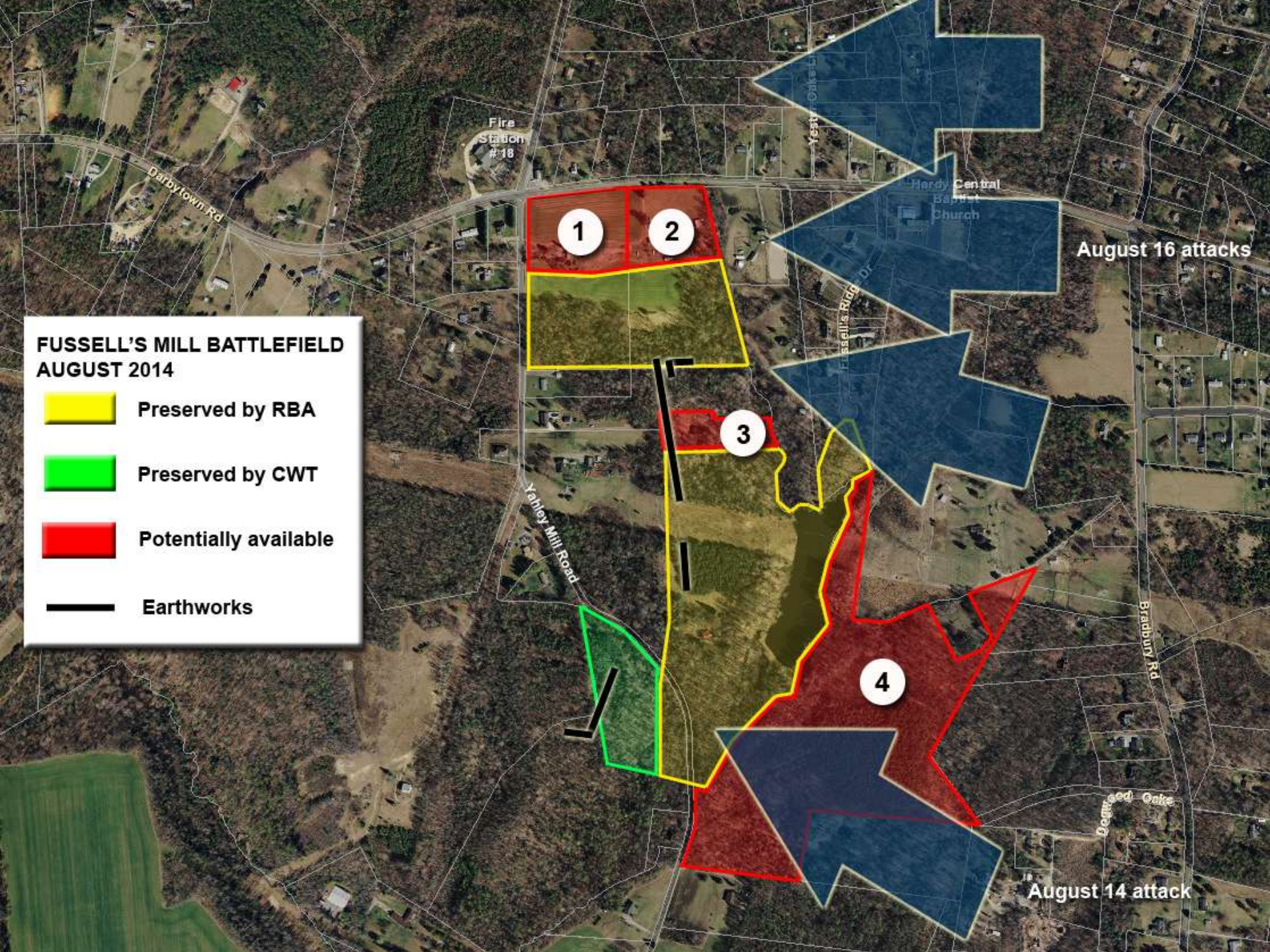
*Richmond* *Battlefields*  
**ASSOCIATION**





**FUSSELL'S MILL BATTLEFIELD  
AUGUST 2014**

-  Preserved by RBA
-  Preserved by CWT
-  Potentially available
-  Earthworks

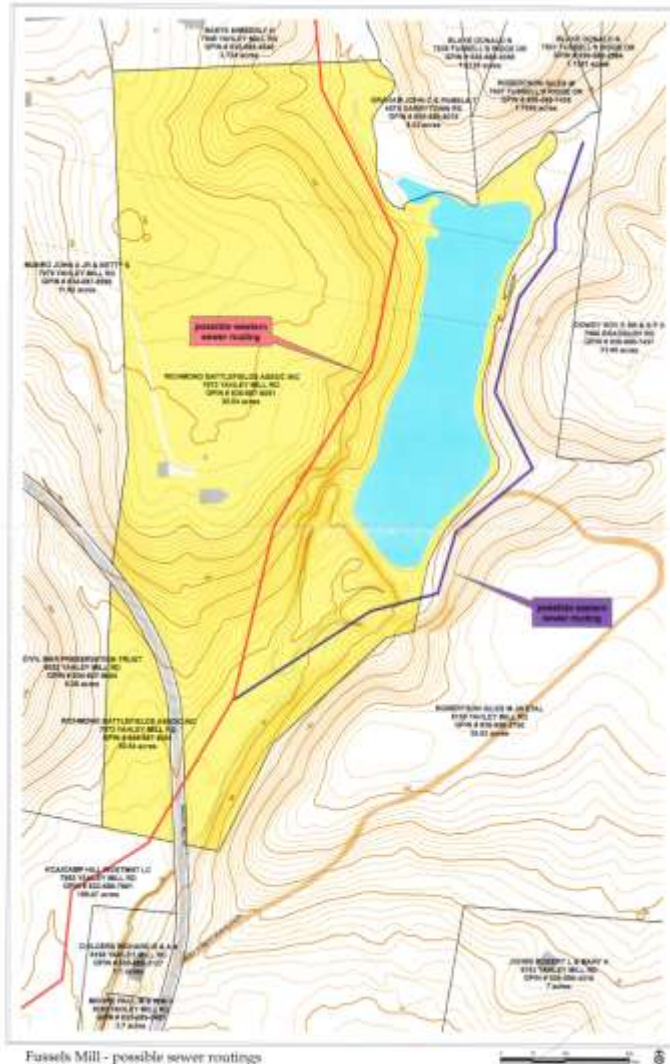




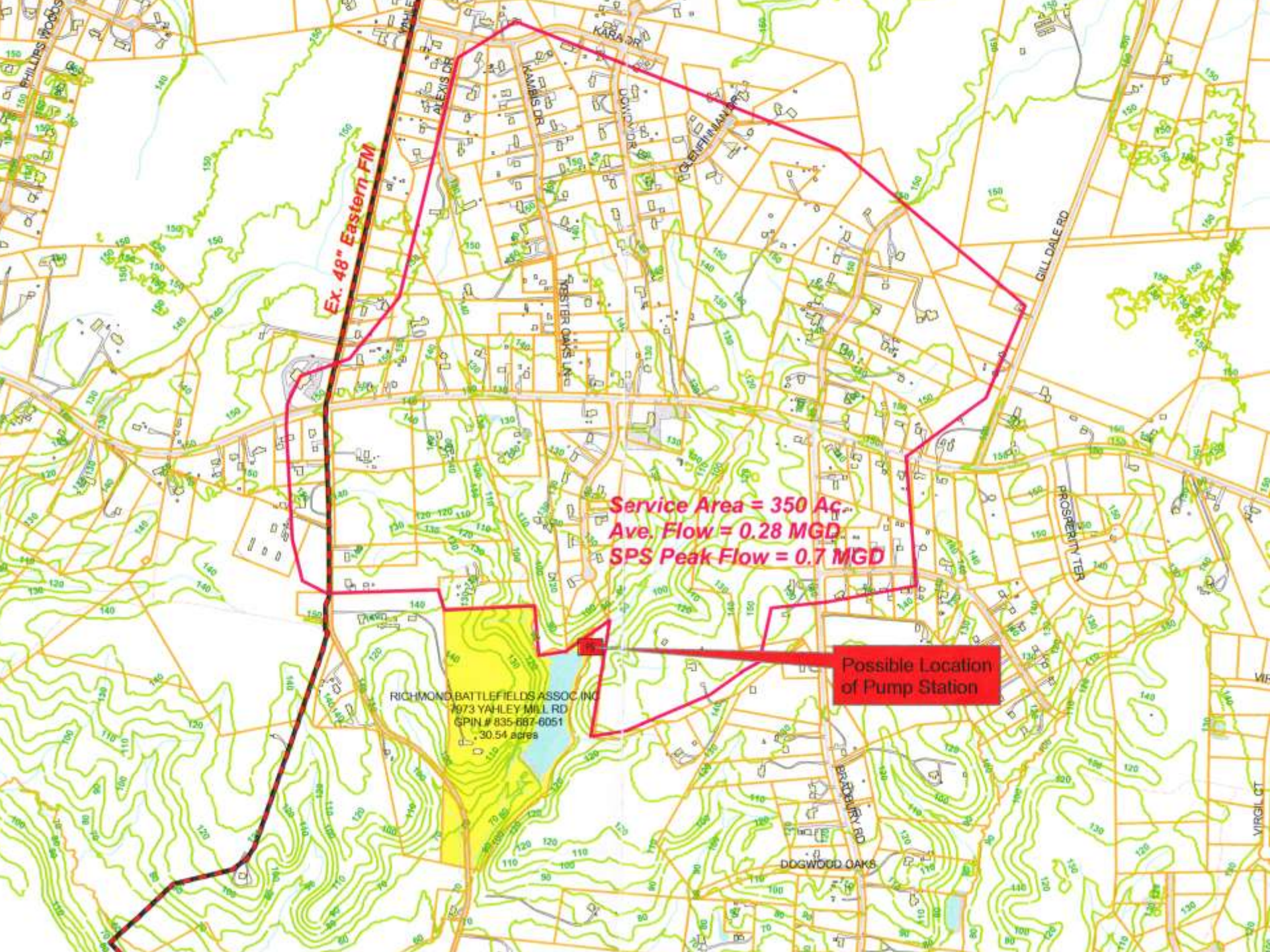


# HENRICO COUNTY VIRGINIA

- Road widened to 4 lanes, 66-foot easement
- Water line buried in road right-of-way
- Sewer line along Bailey Creek/Yahley Mill pond with raised manhole turrets and possible sewage pumping station at head of pond, to serve upstream households

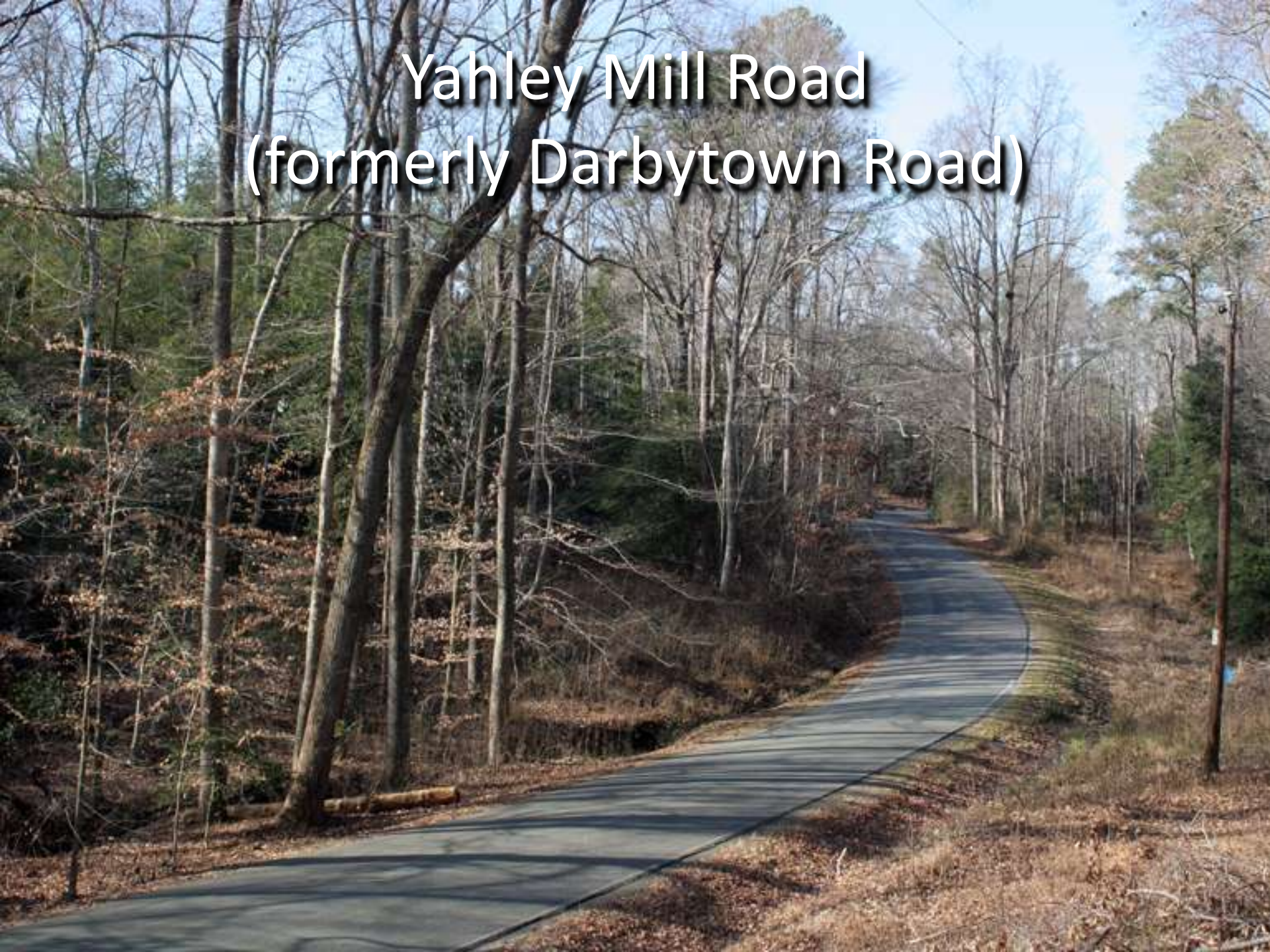








# Yahley Mill Road (formerly Darbytown Road)





# HENRICO COUNTY VIRGINIA

*“These improvements (and any necessary easements through the subject property) are critical to providing water and sewer service to a large portion of eastern Henrico. The County could support the proposed conservation easement provided it could be drafted in such a way that it would not circumvent the planned utility and road improvements in the future.”*

R.J. Emerson, Jr.  
Director of Planning





# HENRICO COUNTY VIRGINIA

*“The County supports your efforts to preserve this important and historic site. Although, it could be decades before we would ever need to install infrastructure in this area, the County cannot give up its ability to obtain an easement to provide sanitary sewer to our citizens if needed in the future.”*

for Virgil R. Hazlett  
County Manager

## Code of Virginia -- Title 10.1 - CONSERVATION.

### § 10.1-1010. Creation, acceptance and duration.

- A. A holder may acquire a conservation easement by gift, purchase, devise or bequest.
- B. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.
- C. A conservation easement shall be perpetual in duration unless the instrument creating it otherwise provides a specific time. For all easements, the holder shall (i) meet the criteria in § [10.1-1009](#) and (ii) either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years which has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.
- D. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it in writing.
- E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.
- F. This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or in any way limit the power of eminent domain as possessed by any public body. In any such proceeding the holder of the conservation easement shall be compensated for the value of the easement.

(1988, cc. 720, 891; 2000, c. [182](#); 2003, c. [1014](#).)

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# Henrico County Board of Supervisors meeting September 25, 2012



**HENRICO COUNTY**  
VIRGINIA



# Henrico County Field of Honor

Volume II

Louis H. Manarin







Fussell's Mill as it appeared early in the twentieth century when it was known as Yale's Mill.  
Courtesy of Dr. & Mrs. Giles M. Roberts

## Chapter Seven Second Deep Bottom — The Second Seven Days' Battles Around Richmond

"At this time not only the day but Richmond seemed to be gone . . . and . . . the people even in Richmond, a few miles off, were never aware how great their danger was, and never knew of nor appreciated the importance of the battle. Indeed, it was scarcely known that a battle had been fought and won."

Major General Charles W. Field  
Fussell's Mill, August 16, 1864, 12:00 noon

The month of August 1864 witnessed significant activity north of the James River as Grant took every opportunity to extend his own lines and to force Lee to retain his army on the defensive from Richmond to the south of Petersburg. During the month, Union naval activity increased on the river, the Union presence at Deep Bottom continued, excavation started on the canal upriver at Dutch Gap, and in mid-August, what would later be called the Second Deep Bottom Campaign, witnessed what Grant himself described as "some tolerably hard fighting."

Frustrated by the Confederate batteries above Dutch Gap, General Benjamin F. Butler proposed the excavation of a canal at Dutch Gap, some three and a half miles upriver from Deep Bottom. Butler proposed the project in order to bypass the shallow waters of Trent's Reach and to provide access to the upper James. At Dutch Gap the river turned sharply to the left

and a half miles around the peninsula, the river channel pinched back to the east toward the lower turn before it turned north. The lower and upper turns were separated by a narrow neck of land some 500 feet wide.

The County of Henrico traces its beginning as a geographic-political entity back to this narrow neck of land. Early in September 1611, Sir Thomas Dale, under direction of the Virginia Company of London, moved up the James from Jamestown to establish the colony's second settlement. Dale established his town, which he called Henrico in honor of Henry Frederick, Prince of Wales, James I's son, "upon a neck of very high land, 3 parts there of environed with the main River." As a defensive measure



Farrar's Island/Dutch Gap and environs — 1862 Confederate map drawn by Captain William Thomas Hardy, Engineer, CSA.

Private collection of Charles Hardy Peple

Dale's men erected a log fence known as a palisade across the narrow neck of land. Behind the palisade fence, Dale's men cleared "seven English

**HENRICO  
HISTORIC PRESERVATION  
ADVISORY COMMITTEE**




**2010  
AWARD OF MERIT**

In recognition of  
distinguished contributions  
to historic preservation in the  
County of Henrico, Virginia  
presented to the

**Richmond Battlefields  
Association**

For acquisition and protection of  
the Fussell's Mill property  
associated with the 1864  
second Deep Bottom  
Civil War battlefield.

  
County Manager

  
Chairman  
Board of Supervisors

  
Chairman  
Henrico Historic Preservation  
Advisory Committee



# HENRICO COUNTY VIRGINIA









Thank you.

